

Securities and Exchange Commission

§210.1-01

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AUTHORITY: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z-2, 77z-3, 77aa(25), 77aa(26), 77nn(25), 77nn(26), 78c, 78j-1, 78l, 78m, 78n, 78o(d), 78q, 78u-5, 78w, 78ll, 78mm, 80a-8, 80a-20, 80a-29, 80a-30, 80a-31, 80a-37(a), 80b-3, 80b-11, 7202 and 7262, unless otherwise noted.

ATTENTION ELECTRONIC FILERS

THIS REGULATION SHOULD BE READ IN CONJUNCTION WITH REGULATION S-T (PART 232 OF THIS CHAPTER), WHICH GOVERNS THE PREPARATION AND SUBMISSION OF DOCUMENTS IN ELECTRONIC

FORMAT. MANY PROVISIONS RELATING TO THE PREPARATION AND SUBMISSION OF DOCUMENTS IN PAPER FORMAT CONTAINED IN THIS REGULATION ARE SUPERSEDED BY THE PROVISIONS OF REGULATION S-T FOR DOCUMENTS REQUIRED TO BE FILED IN ELECTRONIC FORMAT.

APPLICATION OF REGULATION S-X (17 CFR PART 210)

§210.1-01 Application of Regulation S-X (17 CFR part 210).

(a) This part (together with the Financial Reporting Releases (part 211 of this chapter)) sets forth the form and content of and requirements for financial statements required to be filed as a part of:

(1) Registration statements under the Securities Act of 1933 (part 239 of this chapter), except as otherwise specifically provided in the forms which are to be used for registration under this Act;

(2) Registration statements under section 12 (subpart C of part 249 of this chapter), annual or other reports under sections 13 and 15(d) (subparts D and E of part 249 of this chapter), and proxy and information statements under section 14 of the Securities Exchange Act of 1934 except as otherwise specifically provided in the forms which are to be used for registration and reporting under these sections of this Act;

(3) Registration statements and annual reports filed under the Public Utility Holding Company Act of 1935 (part 259 of this chapter) by public utility holding companies registered under such Act; and

(4) Registration statements and shareholder reports under the Investment Company Act of 1940 (part 274 of this chapter), except as otherwise specifically provided in the forms which are to be used for registration under this Act.

(b) The term *financial statements* as used in this part shall be deemed to include all notes to the statements and all related schedules.

(c) In addition to filings pursuant to the Federal securities laws, §210.4-10 applies to the preparation of accounts by persons engaged, in whole or in part, in the production of crude oil or

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natural gas in the United States pursuant to section 503 of the Energy Policy and Conservation Act of 1975 (42 U.S.C. 6383) (EPCA) and section 1(c) of the Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. 796), as amended by section 505 of EPCA.

[37 FR 14593, July 21, 1972, as amended at 43 FR 40712, Sept. 12, 1978; 45 FR 63680, 63687, Sept. 25, 1980; 46 FR 36124, July 14, 1981; 50 FR 25214, June 18, 1985]

§ 210.1-02 Definitions of terms used in Regulation S-X (17 CFR part 210).

Unless the context otherwise requires, terms defined in the general rules and regulations or in the instructions to the applicable form, when used in Regulation S-X (this part 210), shall have the respective meanings given in such instructions or rules. In addition, the following terms shall have the meanings indicated in this section unless the context otherwise requires.

(a)(1) *Accountant's report.* The term *accountant's report*, when used in regard to financial statements, means a document in which an independent public or certified public accountant indicates the scope of the audit (or examination) which he has made and sets forth his opinion regarding the financial statements taken as a whole, or an assertion to the effect that an overall opinion cannot be expressed. When an overall opinion cannot be expressed, the reasons therefor shall be stated.

(2) *Attestation report on internal control over financial reporting.* The term *attestation report on internal control over financial reporting* means a report in which a registered public accounting firm expresses an opinion, either unqualified or adverse, as to whether the registrant maintained, in all material respects, effective internal control over financial reporting (as defined in § 240.13a-15(f) or 240.15d-15(f) of this chapter), except in the rare circumstance of a scope limitation that cannot be overcome by the registrant or the registered public accounting firm which would result in the accounting firm disclaiming an opinion.

(3) *Attestation report on assessment of compliance with servicing criteria for asset-backed securities.* The term *attestation report on assessment of compliance with servicing criteria for asset-backed se-*

curities means a report in which a registered public accounting firm, as required by § 240.13a-18(c) or 240.15d-18(c) of this chapter, expresses an opinion, or states that an opinion cannot be expressed, concerning an asserting party's assessment of compliance with servicing criteria, as required by § 240.13a-18(b) or 240.15d-18(b) of this chapter, in accordance with standards on attestation engagements. When an overall opinion cannot be expressed, the registered public accounting firm must state why it is unable to express such an opinion.

(4) *Definitions of terms related to internal control over financial reporting.*

Material weakness means a deficiency, or a combination of deficiencies, in internal control over financial reporting (as defined in § 240.13a-15(f) or 240.15d-15(f) of this chapter) such that there is a reasonable possibility that a material misstatement of the registrant's annual or interim financial statements will not be prevented or detected on a timely basis.

Significant deficiency means a deficiency, or a combination of deficiencies, in internal control over financial reporting that is less severe than a material weakness, yet important enough to merit attention by those responsible for oversight of the registrant's financial reporting.

(b) *Affiliate.* An *affiliate* of, or a person *affiliated* with, a specific person is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(c) *Amount.* The term *amount*, when used in regard to securities, means the principal amount if relating to evidences of indebtedness, the number of shares if relating to shares, and the number of units if relating to any other kind of security.

(d) *Audit (or examination).* The term *audit* (or *examination*), when used in regard to financial statements, means an examination of the financial statements by an independent accountant in accordance with generally accepted auditing standards, as may be modified or supplemented by the Commission, for the purpose of expressing an opinion thereon.